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EXAMINER

COHEN, JODI F

ART UNIT

PAPER NUMBER

1791

NOTIFICATION DATE

DELIVERY MODE

03/17/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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DETAILED ACTION

Response to Arguments

Examiner thanks applicant's for providing a full and clear response to the office action filed 09/15/2009, unfortunately applicant's arguments regarding the rejections of claims 1-28 under 35 U.S.C. 112 first paragraph is considered persuasive, however applicant's arguments regarding rejections of claims 1-28 under 35 U.S.C. 112 second paragraph are not considered persuasive. Gradually is considered a relative term. The paragraph cited in the specification does not further define the term. The discussion of a "relatively smooth curve" or a "bell-shaped distribution curve" provide no further support to show what the applicant intends the scope of claim 1 to include. It would be unclear to one of ordinary skill in the art what is covered by the meets and bounds of claim 1 and thus claim 1 is rendered indefinite.

Applicants arguments regarding the rejections under 35 U.S.C. 103(a) that Jensen would not teach introduce bubbles into the slurry after it has been casted rather than before are not considered persuasive. Applicant specifically argues that this proposed modification would be inconsistent with the overall methodology of Jensen. Applicant states Jensen teaches it is difficult in the art to "form batches of cementitious slurry with relatively consistent characteristics (i.e. density, even dispersion of aeration, quantities of ingredients, etc.)" and that Jensen solves these problems by providing weighted amounts of dry ingredients and metered amounts of liquid ingredients to obtain relatively consistent quantities of ingredients in each batch. Applicant also states that Jensen pours the slurry mixture into a heated mold to collapse air cells in contact

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with the surface of the mold and thus one would not depart from the method taught by Jensen and provide aeration after casting.

These citations do not show that Jensen emphasizes it is necessary to provide aeration prior to casting. There is nothing to lead one of ordinary skill in the art to believe that upon providing aeration after casting the bubbles at the outer surface in contact with the mold would not still collapse. In fact, one of ordinary skill in the art would know just the opposite. The bubbles in contact with the heated mold necessarily experience an increase in volume due to the expansion of the heated gas and an increase in outer pressure due to the confinement of the mold and would still burst whether added before or after casting. Additionally, applicant provides no evidence that aeration after casting would result in a different product nor any evidence that one of ordinary skill in the art would believe that aeration after casting would cause one to get a different product. Additionally, one of ordinary skill in the art always has motivation to improve upon an existing methodology thus one of ordinary skill in the art at the time of the invention would be more likely than not to try providing aeration after casting because the court has held that a person of ordinary skill has good reason to pursue the known options within his or her technical grasp, such as providing bubbles to a slurry mixture after casting rather than before, with a reasonable expectation of success. If this leads to the anticipated success, it is likely that product was not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103." *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1397 (2007).

Applicant's remaining arguments are solely regarding the amendments to claim 1, which will not be entered for the reasons below;

Specifically the limitations requiring the premix to have a "viscosity that will permit as bubbles generated in the premix in step (b) to migrate" and requiring a maximum porosity of from 25 to 60% over a region corresponding to 20 to 80% along the cross-section of the product" raise issues of new matter. Furthermore, these limitations create a new combination of limitation for claim 1 and all of its depending claim, which would require further search and consideration.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jodi Cohen whose telephone number is 571-270-3966. The examiner can normally be reached on Monday-Friday 7:00am-5:00pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jodi F. Cohen/
Examiner, Art Unit 1791